

Remarks:

This Preliminary Amendment is intended to cancel all the claims presently pending and to replace those claims with claims 1-21 of Fischell *et al.* United States patent 6,534,693B2 on March 18, 2003 (hereafter “Fischell *et al.* ‘693”). Claims 37-57 herein correspond to claims 1-21 of Fischell *et al.* ‘693.

Claims 58-62 originate from Fischell *et al.* United States Patent Application Publication US2002/0055701 A1, published May 9, 2003 (hereafter “the Fischell *et al.* ‘701 PAP”). Claims 58-62 were transferred from application SN 10/435,515 filed May 9, 2003, while SN 10/435,515 was pending, into the parent of this application per amendment dated January 21, 2004. Thus, this application contains claims from Fischell *et al.* ‘693 issued patent and from the Fischell *et al.* ‘701 PAP, which were copied into pending U.S. applications filed on or before May 9, 2003.

This continuation application is being filed out of abundance of caution to determine whether, in fact, interfering subject matter is claimed in both the Fischell *et al.* ‘693 patent, the Fischell *et al.* ‘701 PAP and the present application. It is to be noted that the January 31, 2001 filing date of the Fischell *et al.* ‘693 patent is after the January 16, 2001 priority date of the provisional application from which this application claims priority.

Proposed Counts

It is proposed that claim 1 of the Fischell *et al.* ‘693 patent and claim 37 of this application (which are identical) and claim 1 of the Fischell *et al.* ‘701 PAP and claim 58 of this application (which are identical) form the subject matter of proposed counts which reads as follows:

Proposed Count 1

A sheet of material adapted for implantation between tissues of a human body, the sheet of material including an attached anti-proliferative drug, and anti-proliferative drug being designed to reduce the generation of scar tissue, the anti-proliferative drug being selected from the group consisting of Rapamycin, tacrolimus [sic, tacrolimus] (FK506), and one of the following analogs of sirolimus: SDZ-RAD, CCI-779, 7-epi-rapamycin, 7-thiomethyl-rapamycin, 7-

epitrimethoxyphenyl-rapamycin, 7-epi-thiomethyl-rapamycin, 7-demethoxy-rapamycin, 32-demethoxy, 2-desmethyl and proline.

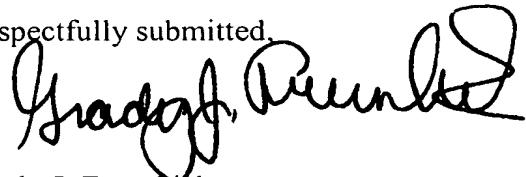
Proposed Count 2

A sheet of material adapted for implantation between tissues of a human body, at least part of the sheet of material having an anti-proliferative drug attached, the action of the anti-proliferative drug being a reduction in the generation of scar tissue, the anti-proliferative drug being selected from the group that includes Rapamycin, Taxol, Alkeran, Cytoxan, Leukeran, Cis-platinum, BiCNU, Adriamycin, Doxorubicin, Cerubidine, Idamycin, Mithracin, Mutamycin, Fluorouracil, Methotrexate, Thoguanine, Toxotere, Etoposide, Vincristine, Irinotecan, Hycamptin, Matulane, Vumon, Hexalin, Hydroxyurea, Gemzar, Oncovin and Etophophos, tacrolimus (FK506), and the following analogs of sirolimus: SDZ-RAD, CCI-779, 7-epi-rapamycin, 7-thiomethyl-rapamycin, 7-epi-trimethoxyphenyl-- rapamycin, 7-epi-thiomethyl-rapamycin, 7-demethoxy-rapamycin, 32-demethoxy, 2-desmethyl and proline.

Claims corresponding to the count:

It is suggested that claims 1-21 of the Fischell *et al.* '693 patent and claims 37-57 herein all correspond to the above-proposed count. Claims 58-62 herein correspond to claim 1, 9, 18, 21, 23 of the Fischell *et al.* '701 PAP and to the above-proposed Count 2. This correspondence is more clearly set forth in the concurrently filed document titled CLAIM CORRESPONDENCE.

Respectfully submitted,



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